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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,949	02/06/2002	Robert Blake	1274-006M	4202
9629	7590	11/17/2004	EXAMINER	
MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004			LE, THIEN MINH	
			ART UNIT	PAPER NUMBER
			2876	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,949

Applicant(s)

BLAKE ET AL.

Examiner

Thien M. Le

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6-8, 10-17, 20, 22, 23, 25-28, 30, 32, 33 and 35 is/are rejected.
- 7) ☒ Claim(s) 3, 5, 9, 18, 19, 21, 24, 29, 31 and 36-39 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

The information disclosure statement filed on 4/23/2002 has been entered.

Claims 1-39 are presented for examination.

Specification

The abstract of the disclosure is objected to because it contains more than 150 words. Applicant is respectfully noted it is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. Correction is required. See MPEP § 608.01(b).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-2, 4, 6-8, 10-17, 20, 22-23, 25-28, 30, 32-33, 35, are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 5,340,971 (herein after referred as "the '971 patent").

Although the conflicting claims are not identical, they are not patentably distinct from each other because recited essentially the same limitations.

Claim 1 is rejected in view of claim 15 of the ' 971 patent. Claim 15 of the ' 971 patent recites: A portable bar code symbol reading system comprising: a hand-holdable housing, an object detection means for automatically detecting the presence of an object within an object detection field defined external to said housing; a bar code presence detection means for detecting in automatic response to the detection of said object within said object detection field, and a bar code scan data generating means for producing and collecting bar code scan data from said bar code within said scan field. As can be seen, the patent protections have been granted to the earlier filed patent application.

Claim 2 is rejected in view of claim 15 and further in view of claim 4 of the '971 patent. It is noted that claim 4 of the '971 patent recited the object detection means for producing an infra-red light beams and having the same functions characteristics as required in claim 2.

Regarding claim 4, see claim 15 of the '971 patent as discussed above. It is noted that claim 15 of the '971 patent further recited processing means having the functions and characteristics as recited in claim 4.

Regarding claim 6, see claim 4 of the '971 patent as discussed above. It is noted that claim 4 of the '971 patent further recited means for detecting object sensing energy reflected off the object.

Regarding claim 7, claim 15 of the '971 patent recites a hand-holdable housing having essentially the same features as recited in claim 7.

Regarding claim 8, the claimed limitations is the functions of the object detection means as recited in claim 15 of the '971 patent.

Regarding claim 10-11, claims 15 of the '971 patent recited an automated bar code scanner which would embrace all steps set forth in these claims.

Regarding claims 12-13, see the scanner systems as taught by claims 15 and claim 1 of the '971 patent would embrace all method steps set forth in these claims.

Regarding claim 15, see claims 1, 4, 15, and 38 of the '971 patent. Specifically, the photoreceiving means is considered as light detection means. Further, the analog-digital converter is considered as a part of the processing means as recited in claim 4 of the '971 patent since claim 38 of the '971 patent recited a means for producing digital data from scanned analog data, which essentially referring to an analog and digital converter.

Regarding claims 14, 16-17, 20, 22-23, 25-28, 30, 32-33, 35, all limitations of these claims have been discussed and are embraced by the laser scanning system as recited in claims 1, 4, and 15 of the '971 patent.

Allowable Subject Matter

Claim 34 is allowed.

Claim 3, 5, 9, 18, 19, 21, 24, 29, 31, 36, 37-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 3, the prior art fails to disclose a hand held bar code reader as claim 1 wherein the object sensing energy source is an ambient light producing source having the functions and characteristics as recited.

Regarding claims 5 and 21, the prior art fails to disclose a hand held bar code reader as claims 1 and 20 respectively; and wherein the bar code presence detection means processes the bar code signal data on a scan line by scan line basis in the manner as recited in these claims.

Regarding claims 9, 29 and 36-39, the prior art fails to disclose a hand held bar code reader as claims 1, 23 and 35 respectively; and wherein the scanning field is a planar plan and the object detection field is having a volumetric extent in the manner as recited in these claims.

Regarding claim 18, the prior art fails to disclose a hand held bar code reader as claim 17 further comprising the step of comparing the ambient light intensity with a predetermined threshold.

Regarding claim 19, the prior art fails to disclose a hand held bar code reader as claim 17 further comprising the step of converting symbol character data to a data format compatible with a host device and the steps of processing and transmitting the converted symbol character data.

Regarding claims 24, 31 and 34, the prior art fails to disclose a hand held bar code reader as claims 23 and 30 respectively and further comprising a third means for producing a third signal representative of the presence of a coded symbol.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thien M. Le whose telephone number is (571) 272-2396. The examiner can normally be reached on Monday - Friday from 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Le, Thien Minh
Primary Examiner
Art Unit 2876
November 8, 2004